

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

**File No. ER02020654
April 16, 2002**

NOTICE OF EMERGENCY RULEMAKING

**SUBJECT: ORGANIZED AUTOMOBILE INSURANCE FRAUD GRANT
FUNDING PROGRAM**

PROPOSED REGULATORY ACTION

The California Department of Insurance (CDI) proposes to amend Article 5 (sections 2698.70-2698.77) of Subchapter 9, Chapter 5, of Title 10 of the California Code of regulations, regarding the program for the investigation and prosecution of organized automobile insurance fraud.

PUBLIC HEARING

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Insurance will conduct written proceedings, during which time any interested person or such persons duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the California Department of Insurance, Fraud Division, Wesley E. Kennedy, Senior Staff Counsel at 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826, by 5 p.m. on June 20, 2002, which is hereby designated as the close of the written comment period. It is requested, but not required, that written statements, arguments or contentions sent by mail or hand delivered be submitted in triplicate. The Department has not scheduled a public hearing on this action. However, the Department will hold a hearing on June 20, 2002, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before close of the written comment period.

Comments sent by facsimile: (916) 255-3344, or electronic mail: kennedyw@insurance.ca.gov must be received before 5:00 p.m. on the last day of the public comment period. All comments, including e-mail or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the CDI to provide copies of any notices for proposed changes in the regulation text of which additional comments may be solicited. Reasonable accommodation or sign language interpreting services at a public hearing will be provided upon request. Such a request should be made no later than 15 days prior to the close of the written comment period.

CONTACT: Inquiries concerning this rulemaking process may directed to directed to Wesley E. Kennedy, Senior Staff Counsel, at (916) 854-5760. The back-up contact person is George Teekell, Staff Counsel, at (415) 538-4390. Inquiries concerning the substance of this action should be directed to Wesley E. Kennedy at the above number and may be sent by e-mail at kennedyw@insurance.ca.gov. In any such inquiry, please identify the action by using the CDI regulation control number: ER02020654.

AUTHORITY AND REFERENCE

Authority: Sections 1874.8, 1874.81, Insurance Code. Reference: Sections 1874.8(a), (g) and 1874.81, Insurance Code, Vehicle Code section 670.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 9, article 5, Sections 2698.70 and 2698.71, Title 10, Chapter 5 of the California Code of Regulations (CCR) regarding the program for investigation and prosecution of organized automobile fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1874.8 and 1874.81 which require the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting organized automobile fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999. AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature made the following findings and declaration of purpose:

Section 1. (a) This act shall be known as the Organized Crime Prevention and Victim Prevention Act of 1999.

“(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.”

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1874.8, requires the Commissioner to establish an annual assessment on each automobile for which a policy of insurance has been issued in order to fund the activity of the Commissioner, the California Highway Patrol and from 3 to 10 county District Attorney's Offices.

The proposed amendments are necessary to implement, interpret and make specific the provisions of CIC sections 1872.8, 1874.8 and 1874.81 and title 10, California Code of Regulations sections 2698.70 and 2698.71. The proposed action would amend the existing provisions to provide authority for a grantee to carry-over a percentage of grant funds from one funding cycle to another funding cycle due to a related carry-over of an investigation or prosecution or on submission of justification made to and approval by the Commissioner.

The specific regulation being amended by this notice are as follows:

Section 2698.73 Funding Procedure

“(d) A grantee who has undertaken investigations and prosecutions which will carry-over into a subsequent funding cycle may carry-over into the subsequent funding cycle distributed but unused funds not exceeding twenty-five percent (25%) of the total funding cycle, provided that the grantee files a written plan, at the end of the funding cycle, which specifies and justifies to the Commissioner how those funds will be used. In the event that, due to extenuating circumstances, distributed funds exceeding twenty-five percent (25%) of the previous total funding cycle are unused, the Commissioner may consider and approve requests for carry-over of the unused funds to the extent that the grantee provides justification.”

MATERIAL INCORPORATED BY REFERENCE

There is no material incorporated by reference.

FINDING OF EMERGENCY

California Insurance Code section 1874.81, provides in pertinent portion:

“(a) The Commissioner shall adopt emergency regulations establishing the criteria that shall be used to award grants to district attorneys under Section 1874.8.

(b) The regulations required by Subdivision (a) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code), and the adoption of those regulations shall be deemed an emergency and necessary of the immediate preservation of the public peace, health, and safety or general welfare.”

DETERMINATIONS

EFFECT ON SMALL BUSINESSES

The proposed regulation will not have an adverse effect on small businesses. The subject of the proposed regulation affects only the ability of grantee District Attorneys to carry over funds.

IMPACT ON BUSINESSES AND JOBS

It is the initial determination of the Commissioner of the California Department of Insurance that the regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with the businesses on other states because the proposed regulation does not impose any additional expense on affected entities. The Commissioner has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently within the State of California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Insurance Commissioner must determine the potential impact of the proposed action on private persons or businesses directly affected by the proposal. The agency is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING

The matters proposed herein will not affect housing costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The CDI has determined that there will be no cost savings or increase, nor will these regulations impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CDI must determine that no reasonable alternative considered by the California Department of Insurance or that has otherwise been identified or brought to its attention that would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

FEDERAL FUNDING

The matters proposed herein will not affect federal funding.

NON-DISCRETIONARY COST OR SAVING

The matters proposed will not impose any non-discretionary cost or savings to local agencies.

COSTS AND SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to state agencies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

PUBLIC DISCUSSION

A public discussion was not undertaken prior to the publication of this regulation. The amendments do not involve complex or a large number of proposals that can not easily be reviewed during the comment period. In addition, the amount of the assessment is directed by statute and the text incorporates existing regulatory text recently promulgated in a closely related program. It is not anticipated that these conforming amendments will be controversial.

ACCESS TO COPIES OF PROPOSED REGULATION AND STATEMENT OF REASONS

The California Department of Insurance has prepared and has available for public review an initial statement of reasons for the emergency regulations, the text and final statement of reasons, once prepared, and any supplemental information contained in the rulemaking file. Upon prior request, the rulemaking file is available for inspection at 9342 Tech Center Drive, Suite 100, Sacramento, California, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted. Requests should be directed to the agency contact person (listed above).

The Department of Insurance maintains a internet web site at where copies of materials published or distributed by the department may be obtained. That web site is: <http://www.insurance.ca.gov>. Find near the top of the page the heading "Protecting Consumers." In this section scroll down until you see the subheading "BE INFORMED." Click on the nearby "search for proposed regulations" link. When the search field appears enter "ER02020654" (the Department's regulation file number for these regulations). Alternatively, search for the California Insurance Code number of a code section that these

regulation implement (e.g., “1874.8”) or search by key word (e.g., “carry-over” or “funding cycle”). Then click on the “submit” button to display links the filing documents.

ADDITIONAL STATEMENTS AND COMMENTS

As a result of public comment (oral or written), the Insurance Commissioner may determine that changes to the proposed regulations are appropriate. If those changes are sufficiently related to the original text the public was originally noticed of in the proposed regulatory action, copies of the revised proposed regulations will be sent to all persons who testified at the public hearing or submitted comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulation. The full text of the changed regulations will be available for at least 15 days prior to the date on which the agency adopts, amended, repeals the resulting regulations.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was not adequately placed on notice that the changed action could result from the originally proposed action.

If adopted these regulations will appear in Title 10, Chapter 5, Subchapter 9, Article 5, Sections 2698.73, California Code of Regulations.

NOTICE OF EMERGENCY RULEMAKING

Pursuant to Insurance Code section 12921.7, a notice of proposed emergency, including the informative digest, which contains the general substance of the proposed regulation, and a copy of the proposed regulations were sent to all persons on the Insurance Commissioner’s interested parties mailing list. Pursuant to California Government Code section 11346.4, subsection (a), the Commissioner has also mailed this notice (including a copy of the proposed regulation) to all those who have filed a request for notice of regulatory action pursuant to that section. A proof of service, indicating compliance with Insurance Code section 12921.7 and Government Code section 11346.4, subsection (a) has been filed with this regulatory action package.

CALIFORNIA DEPARTMENT OF INSURANCE

WESLEY E. KENNEDY
Senior Staff Counsel